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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JOSEPH L. MIZZONI,

Plaintiff,

vs.

STATE OF NEVADA, ex rel. NEVADA
DEPARTMENT OF CORRECTIONS, et al.,

Defendants.

3:11-cv-00186-LRH-WGC

**MOTION TO STRIKE PLAINTIFF'S "REPLY
AND OBJECTION" (#83)**

Defendants, Ronald Bryant, Adam Endel, and E.K. McDaniel, by and through counsel Catherine Cortez Masto, Attorney General of the State of Nevada, and Chaz W. Lehman, Deputy Attorney General, hereby move to strike Plaintiff's "Reply and Objection". (#83). This motion is made pursuant to Fed. R. Civ. P. 12(f), LR IB 3-2 and based upon the following points and authorities and all papers and filings in this case.

MEMORANDUM OF POINTS AND AUTHORITIES

I. LEGAL STANDARD

Pursuant to FED. R. CIV. PRO. 12(f), the court may strike any pleading that is "redundant, immaterial, impertinent, or scandalous." Although FED. R. CIV. PRO. 12(f) references on only "pleadings," courts have shown a willingness to strike improperly filed documents even when such stricken documents are not pleadings. *See Ctr. for Biological Diversity v. U.S. Fish & Wildlife Service*, 450 F.3d 930, 944 (9th Cir. 2006) (district court did

not abuse its discretion in striking a plaintiff's "extra-record" document because the document was offered for an impermissible use); *Hambleton Bros. Lumber Co. v. Balkin Enters., Inc.*, 397 F.3d 1217, 1226 (9th Cir. 2005) (court granted motion to strike an errata notice and witness' declaration where the filing of such papers did not comport with procedural rules).

II. DISCUSSION

Any party may challenge a Magistrate Judge's proposed recommendation regarding a dispositive motion by filing written objections within fourteen days after being served with a copy of the Report and Recommendation. 28 U.S.C. § 636(b)(1)(C); LR IB 3-2. The opposing party shall within fourteen (14) days thereafter file and serve points and authorities opposing the objections. LR IB 3-2. The district court must then "make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C). The district court may accept, reject, or modify in whole or in part, the findings and recommendations made by the Magistrate Judge. *Id.*; see FED. R. CIV. PRO. 72(b).

Plaintiff's "Reply and Objection" (#83) in support of his previous objection to the Magistrate Judge's Report and Recommendation is a rogue document and should be stricken. Nowhere in the Federal Rules of Civil Procedure or the Local Rules is Plaintiff granted the authority to reply to the opposing party's opposition to an objection to a Magistrate Judge's ruling. The rule permits a party to object to a magistrate judge's ruling and an opposing party to respond. LR IB 3-2. Therefore, Plaintiff's "Reply and Objection" (#83) should be stricken because filing a reply to an opposition to an objection is improper.

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1 **III. CONCLUSION**

2 Plaintiff's reply in support of his objection to the report and recommendation should be
3 stricken as improper under the rules.

4 Dated: August 13, 2014

5 CATHERINE CORTEZ MASTO
6 Attorney General

7 By: 

8 CHAZ W. LEHMAN
9 Deputy Attorney General
10 Bureau of Litigation
11 Public Safety Division

12 *Attorney for Defendants*
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CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on August 13, 2014, I caused to be served a copy of the foregoing **MOTION TO STRIKE PLAINTIFF'S "REPLY AND OBJECTION" (#83)**, to be served, by U.S. District Court CM/ECF Electronic Filing on the following:

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